

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAREEF MUHAAFIZ BROOKS,

Defendant-Appellant.

UNPUBLISHED

March 7, 2006

No. 257340

Wayne Circuit Court

LC No. 04-003770-01

Before: Cooper, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

Defendant was charged with carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Following trial, a jury convicted defendant of felon in possession of a firearm and felony-firearm. Defendant appeals his convictions by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant offered the defense of momentary innocent possession to the CCW charge.¹ He testified that he had disarmed a friend, Anthony Pickett, and Pickett confirmed defendant's testimony. Pickett was informed outside the presence of the jury that he could face charges for implicating himself in a crime; subsequently, he admitted that he had lied to protect his friend. The prosecutor offered him immunity from prosecution for perjury should he recant before the jury, and he did so.

Defendant's sole claim on appeal is that the trial court improperly denied his motion for a mistrial. We review a trial court's ruling on such a motion for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). "A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *Id.* The trial court should refrain from declaring a mistrial until "a scrupulous exercise of judicial discretion leads to the conclusion that the ends of public

¹ This Court recognized such a defense in *People v Coffey*, 153 Mich App 311; 395 NW2d 250 (1986) but rejected it as being inconsistent with the statute in *People v Hernandez-Garcia*, 266 Mich App 416, 420; 701 NW2d 191 (2005), lv gtd 474 Mich 1000 (2006). Whether the defense was applicable to one or all of the charges is not at issue here.

justice would not be served by a continuation of the proceedings.’’ *People v Hicks*, 447 Mich 819, 829; 528 NW2d 136 (1994), (Griffin, J.), quoting *United States v Jorn*, 400 US 470, 485; 91 S Ct 547; 27 L Ed 2d 543 (1971).

Defendant has not cited any authority to support his claim that a mistrial should be declared when a defense witness recants perjured testimony; thus, defendant has abandoned the issue. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Moreover, defendant’s claim lacks merit because he received a fair trial. *Lugo, supra*.

Defendant called Pickett to support his testimony that he had momentary innocent possession of the weapon. Until the jury reached a verdict, the parties did not dispute that the defense applied only to the CCW charge. Despite the fact that Pickett recanted, the jury could not reach a verdict as to the CCW charge, which was ultimately dismissed. Because Pickett’s testimony did not establish a defense to the charges of which defendant was convicted and defendant was not convicted of the one charge as to which Pickett’s testimony was offered, Pickett’s recantation could not have prejudiced defendant’s right to a fair trial.

We affirm.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey